IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7643 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

JAHANGIRKHAN FAIZMOHAMMED KHANPATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

Mr. N.D.GOHIL,ASSTT.GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, detention order dated 15.7.1`98 passed by the Commissioner of Police, Ahmedabad is under challenge with request that the impugned order passed under section 3(2) of Prevention of Anti-Social Activities Act,, 1985 (for short-PASA) be quashed and

the petitioner be released forthwith from illegal detention.

The grounds of detention ,Annexure 'C' , to the writ petition disclose ,in the first place, activities in general of the petitioner and in the second place, registration of one criminal case in June 1998 under sections 392, 452, 120-B and 114 IPC and sections 25 and 27 of the Arms Act. Besides this, two confidential witnesses also gave statements against the petitioner. On the aforesaid material, the detaining authority was satisfied that the petitioner is a dangerous person and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed which has been challenged by the learned advocate for the petitioner on four grounds.

One of the grounds of attack is delay in passing the detention order. This ground has no substance. It is not a case of disposal of representation which should can be expeditiously disposed of. Only one criminal case was registered against the petitioner and that too on 11.6.1998. Detention order was passed on 15.7.1998 i.e. after about a month and three days after commission of the only offence by the petitioner. It is not for the detaining authority to jump to the conclusion for passing detention order without examining the material and report submitted by the sponsoring authority. The sponsoring authority collected the material and interrogated two witnesses who narrated about the two incidents between 15.6.1998 and 23.6.1998. It is only thereafter that the report of the sponsoring authority must have been submitted to the detaining authority and if after considering the report, the detaining authority passed the impugned order on 15,7,1998, it cannot be said that it was delayed detention order which requires interference. Thus, I do not find any merit in this contention.

The next attack is that it is a case based on solitary incident hence, the petitioner cannot be adjudged as dangerous person and on the basis of single incident, order of preventive detention also cannot be passed. I again do not find any substance in this contention and attack. There is no prohibition in passing the detention order on the basis of solitary incident,but the requirement is that the nature of solitary incident should be such which was likely to create or had actually created a situation prejudicial for maintenance of public order. The Apex court in Ramveer Jatav vs. State of U.P., AIR 1987 SC 673, while considering the case under

National Security Act, laid down the proposition of law that it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person.There are cases where one ground may be regarded as sufficient if the activity alleged is of such nature that the detaining authority could reasonably infer that the detenu must be habitually engaged in such activity or there may be other circumstances set out in the grounds of detention from which the detaining authority could reasonably be satisfied even on the basis of one ground that unless the detenu is detained,he might indulge in such activity in future .But on the facts of that case, the Apex court after examining the solitary incident against the petitioner, found that the sole incident was not sufficient for holding that his activity was prejudicial for maintenance of public order.

The detaining authority had not said in the grounds of detention that on the basis of solitary incident, the petitioner has been adjudged as dangerous person.In order to adjudge the petitioner a dangerous person within the meaning of section 2(c) of PASA, it has to be established and shown that the petitioner was habitual in committing offences punishable under Chapters 16 and 17 of the IPC and Chapter 5 of the Arms Act. The word 'habitual' means repetition of criminal activities . Ofcourse, on the basis of one registered case, a person cannot be said to be a dangerous person. But in the instant case, two confidential witnesses have also stated against the petitioner and those activities, though not registered in the shape of criminal cases, gave indication that the petitioner was moving with knife which is an offence punishable under Chapter 5 of the Arms Act. Further activities were also alleged by these witnesses and they are repetition of criminal activities of the petitioner as are shown from the grounds of detention as well as from the material on record. The petitioner was,therefore, rightly adjudged to be a dangerous person.

A person who is adjudged a dangerous person cannot be preventively detained unless his activities are found to be prejudicial for maintenance of public order. In order to see whether the activities of the petitioner were prejudicial for maintenance of public order or not, the grounds of detention have to be referred to. In the opening portion of the grounds of detention, the activities in general of the petitioner have been disclosed without any specification and on such vague disclosure, it cannot be said that the activities of the petitioner were prejudicial for maintenance of

public order.

The second material is registration of one case under sections 392 etc. of IPC. It is not indicated in the grounds of detention that this incident actually created a situation prejudicial for maintenance of public order or that even tempo of life of the locality was disturbed on account of this incident. Thus,registration of a single criminal case is also not a ground for reaching the conclusion that the activities of the petitioner were prejudicial for maintenance of public order.

Then remains statements of two witnesses who narrated about the two incidents dated 15.6.198 and 23.6.1998. In the first incident, the petitioner demanded weekly instalment from the witness who was a businessman and on his refusal, he was dragged and beaten and knife was also shown to him. On his alarm, people of the locality collected, The petitioner ran towards them . Thereafter, they ran for safety. From such incident, it cannot be said that public order was disturbed. The second witness stated that the petitioner purchased some articles of daily use from him and on his demanding its price, the petitioner not only refused to pay the same but was excited. He dragged the witness and beat him. On the alarm of the witness, merchants of the locality collected and they were chased by the petitioner with a knife and atmosphere of insecurity was created. This incident also cannot be said to be of such magnitude which had actually disturbed even tempo of life of the community or the locality.

In view of the aforesaid discussion, it can be said that the subjective satisfaction of the detaining authority that the petitioner's activities were prejudicial for maintenance of public order cannot be sustained. As a consequence thereof, the detention order becomes illegal on this ground.

The last contention has been that the petitioner was in judicial custody and this fact was well within the knowledge of the detaining authority and still without cogent and fresh material giving indication that the petitioner may indulge in similar activity, passed the impugned order which has rendered the subjective satisfaction of the detaining authority unsustainable. In para (m) of the writ petition,one of the grounds is that in connection with the offence committed by the petitioner on 11.6.1998,he was arrested on 8.7.1998. He applied for bail which was rejected. Thereafter, the

petitioner is in jail and he has not filed any other bail application in connection with the aforesaid offence in any court. No counter affidavit rebutting this assertion has been filed. The counter affidavit of the detaining authority does not indicate that the petitioner had applied for bail before the High court or before any other court prior to 15.7.1998 when the detention order was passed. In his counter affidavit, the detaining authority has stated in para 12 that he was aware that the petitioner was in judicial custody when the detention order was passed. It is further deposed that there is likelihood of his release on bail by the trial court or by higher forum and if he is released, there is likelihood of his continuing the anti-social activities which would have prejudicially affected maintenance of public order. Paras 9 and 12 of the counter affidavit show that there is likelihood of release of the petitioner by the trial court . It is not disclosed in para 12 that any other bail application was moved by the petitioner in the trial court after rejection of his first bail application . The learned advocate for the petitioner has contended and informed that the petitioner is in judicial custody in connection with solitary offence even till today. As such, it cannot be said that there was fresh and cogent material that after involvement in the single registered case, the petitioner was likely to be released on bail and was further likely to commit similar activity in future. In view of this, in the first place, the subjective satisfaction of the detaining authority becomes non-existent and in the second place, since the petitioner is already in jail right from the date of his arrest, it can be said that the impugned order is not in the nature of preventive detention, rather it is punitive order and this has also rendered the impugned order invalid.

In view of the aforesaid discussions, the impugned order cannot be sustained. The writ petition,therefore, succeeds and is allowed. The impugned order dated 15.7.1998 is hereby quashed. No order for immediate release of the petitioner is required to be passed because of the information furnished by the learned advocate for the petitioner that the petitioner is already in jail in connection with C.R. No. 97/98.

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